ARTICLE 13 FINANCIAL GUARANTEE

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Section 13-101 Financial Guarantee and Improvements Agreement Required. Before any Land Use Change Permit is approved for land use subject to PUD, Subdivision, Rural Land Use or Conservation Subdivision provisions of this Code, the Board of County Commissioners shall require the applicant to file a guarantee of financial security deemed adequate by the Board and payable to the County, and to execute an Improvements Agreement regarding the conditions and improvements identified as requirements of project approval. The purpose of the financial guarantee and Improvements Agreement is to ensure the following.

- **A.** Completion of Project and Reclamation of the Property. The Project is completed, including reclamation of property as applicable.
- **B.** Conditions of Permit Fulfilled. The applicant performs all improvements, mitigation requirements and permit conditions in connection with the construction, operation and termination of the Project.
- C. Applicant Addresses Responsibility for Impacts to Public Facilities and Services. The applicant addresses responsibility for increased demand on public facilities and services as a result of the construction, operation and termination of the Project.
- **D.** Funds are Available to the County to Complete Project, If Necessary. In the event that the Project is suspended, curtailed or abandoned, the County can complete the Project and necessary improvements, or restore the property to its original condition or an acceptable condition at no additional cost to the County.

Section 13-102 Amount of Financial Guarantee. In determining the amount of the financial guarantee, the Board shall consider the following factors.

- **A.** Completion of Project and Reclamation of Property. The estimated cost of completing the Project and of returning property to its original condition or to a condition acceptable to the County, as applicable.
- **B.** Conditions of Permit. The estimated cost of performing all mitigation requirements and permit conditions in connection with the construction, operation, and termination of the project.
- **C. Estimated Cost.** The estimated cost shall be based on the applicant's cost estimate and the following considerations. The Board may require, as a condition of the permit, that the amount of financial security be adjusted based

upon bids received for construction of the Project in compliance with permit conditions.

- 1. The estimated cost for the County to bring in personnel and equipment to complete any unperformed purpose of the financial guarantee;
- **2.** Contingency costs.
- **3.** Consultant fees, including engineering and legal fees.
- **4.** The duration of project construction or activity and a reasonable projection of increased project cost due to inflation, if appropriate.

Section 13-103 Form of Financial Guarantee. The financial guarantee may be in any form acceptable to the Board and shall be set forth in an Improvements Agreement executed by the County and the Applicant.

Section 13-104 Release of Guarantee. The financial guarantee may be released under any one of the following conditions.

- **A.** The permit has been surrendered to the Board before commencement of any physical activity on the Project site; or
- **B.** The Project has been abandoned and the site has been returned to its original condition or to a condition acceptable to the County; or
- **C.** The Project has been satisfactorily completed; or
- **D.** A phase or phases of the Project have been satisfactorily completed allowing for partial release of the financial guarantee consistent with project phasing and as agreed to in the Improvements Agreement.

Section 13-105 Cancellation of the Financial Guarantee. A financial guarantee may be canceled only upon written consent by the Board. The Board may grant a request to cancel all or a portion of a financial guarantee if canceling the guarantee will not detract from the purposes of the security.

Section 13-106 Forfeiture of Financial Guarantee.

A. Notice and Response. If the Board determines that a financial guarantee should be forfeited because of any violation of the permit, the Board shall provide written notice to the surety and to the permit holder.

1. Notice Requirements.

- a. The County shall send by certified mail, return receipt requested, a written notice of forfeiture of financial guarantee to the surety and to the permit holder.
 - (1) Notices shall be mailed to the last known address of the applicant and of the surety.
- **b.** The notice shall contain the following information.
 - (1) The reason for forfeiture of the financial guarantee, specifying each permit violation with references to the section or sections of the Code violated.
 - (2) The permit holder's right to respond by request for a public hearing by the Board, and notice of automatic forfeiture if the permit holder does not respond.
 - (3) The deadline for response by the permit holder.
- 2. Response. The permit holder may request a hearing by the Board, by written request to the [*Administrator/Director*] within thirty (30) calendar days of receipt of the notice of forfeiture of financial guarantee.
 - **a.** If the permit holder submits a timely request for hearing by the Board, the [<u>Administrator/Director</u>] shall schedule a public hearing within [<u>forty-five (45)</u>] calendar days of receipt of the permit holder's request for hearing by the Board.
 - **b.** If the permit holder does not submit a timely request for hearing by the Board, the Board shall order the financial guarantee forfeited.

B. Public Hearing and Action by the Board.

1. **Notification of Hearing.** At least [<u>thirty (30)</u>] calendar days prior to the date of the scheduled public hearing before the Board of County Commissioners, the [<u>permit holder</u>] shall have published a notice of public hearing in a newspaper of general circulation in the Project area.

- 2. Notice to Adjacent Property Owners. At least [thirty (30)] calendar days prior to the date of the scheduled public hearing, the permit holder shall send by certified mail, return receipt requested, a written notice of the public hearing to the owners of record of all adjacent property within a [one (1) mile] radius. The notice shall include a vicinity map, the property's legal description, and an announcement of the date, time and location of the scheduled hearing to consider forfeiture of the financial guarantee.
- 3. Action by Board of County Commissioners. The Board of County Commissioners shall conduct a public hearing pursuant to Article 4, Section 4-103 G, Conduct of Public Hearing. The permit holder may present statements, documents, and other information for consideration by the Board with respect to the alleged violation(s) and forfeiture of financial guarantee.
 - a. **Decision by Board.** The Board shall either withdraw the notice or enter an order for forfeiture of the financial guarantee.
- C. Default and Use of Financial Guarantee. The financial guarantee may be used by the Board in the event of default or allowed default of the permit holder, for the purposes of recovering on the surety or fulfilling the permit obligation of the permit holder. The County may arrange for the lending institution providing money for the permit holder to hold required funds in escrow. Funds shall be disbursed out of escrow by the lending institution to the County upon County's demand for the purposes set forth in this Article.
- **D.** Inadequate Revenue and Cost Recovery. If the forfeiture results in inadequate revenue to cover the costs of accomplishing the purposes of the financial guarantee, the County's attorney shall take such steps as deemed proper to recover such costs where recovery is deemed possible.
- **Section 13-107 Substitute of Surety.** If the license to do business in Colorado of any surety upon a security filed pursuant to this regulation is suspended or revoked by any state authority, then the applicant shall within sixty (60) days after receiving notice thereof, substitute a good and sufficient surety licensed to do business in Colorado. Upon failure of the permit holder to make substitution within the time allowed, the Board shall suspend the permit until proper substitution has been made.